

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES & EXCHANGE COMMISSION,

No. C 11-4941 CW

Plaintiff,

ORDER DENYING  
MOTION FOR RELIEF  
FROM NON-  
DISPOSITIVE  
PRETRIAL ORDER OF  
MAGISTRATE JUDGE  
(Docket No. 92)

v.

CHRISTOPHER SELLS, et al.,

## Defendants.

10 Plaintiff Securities and Exchange Commission (SEC) moves for  
11 relief from the non-dispositive pretrial order of a magistrate  
12 judge. Defendant Tim Murawski, at the Court's invitation, filed  
13 an opposition to the motion. After considering all of the  
14 parties' submissions, the Court now denies SEC's motion.

## BACKGROUND

16 SEC seeks relief from Judge Cousins' February 4, 2013 order  
17 directing the agency to respond to three of Murawski's  
18 interrogatories. Docket No. 91. The interrogatories seek  
19 information obtained by SEC during three interviews that it  
20 conducted during its pre-filing investigation of Murawski in 2010.  
21 SEC contends that the information Murawski requests in those  
22 interrogatories is protected by the work product doctrine.

23 On February 25, 2013, this Court issued an order inviting  
24 Murawski to respond to SEC's motion. Docket No. 96. That order  
25 asked Murawski to explain why he could not obtain the information  
26 requested in the interrogatories by simply taking depositions of  
27 the three witnesses that SEC interviewed in 2010.

1 Murawski filed his response on March 4, 2013. Docket No. 97.  
2 In it, he argues that Judge Cousins' order should stand because  
3 (1) Judge Cousins previously granted a similar discovery request  
4 in this case, (2) the information Murawski seeks is not protected  
5 by the work product doctrine, and (3) Murawski has a "substantial  
6 need" for this discovery. Murawski's only explanation for why he  
7 cannot obtain the information he seeks through depositions is that  
8 "the Court ruled that depositions in this case must be coordinated  
9 with the related class action," Curry v. Hansen Med., Inc., Case  
10 No. 09-5094, "and Curry Defendants have suggested that a PSLRA  
11 stay of discovery is in effect." Docket 97, at 2. He does not  
12 cite any statement by the Court or Curry Defendants indicating  
13 that a discovery stay is actually in effect.

14 DISCUSSION

15 Murawski has not adequately explained why he cannot take  
16 depositions of the three SEC witnesses. Discovery has not been  
17 stayed in this case or in Curry and PSLRA only provides for such a  
18 stay when, unlike here, a motion to dismiss is pending. See 15  
19 U.S.C. § 78u-4(b)(3). In short, Murawski's contention that he  
20 cannot take depositions of the three SEC witnesses is baseless.

21 Nevertheless, Judge Cousins' order directing SEC to respond  
22 to the interrogatories is not contrary to law. His order  
23 specifically distinguishes Hickman v. Taylor, 329 U.S. 495, 508-09  
24 (1947), the principal case on which SEC relies in its motion. As  
25 the order explains, "this case presents a stark contrast to  
26 Hickman" because SEC, unlike the producing party in Hickman, has  
27 failed to produce any of the information Murawski seeks in its  
28 previous responses to his discovery requests. Docket No. 91, at

1 2-3. Furthermore, Judge Cousins found that Murawski, unlike the  
2 party seeking discovery in Hickman, had "presented more than  
3 'adequate reasons' to justify production." Id. at 3. In light of  
4 these differences between Hickman and the present case, Judge  
5 Cousins' order is adequately supported by law.

6 Critically, Judge Cousins' order does not direct SEC to turn  
7 over its attorneys' actual notes from the 2010 interviews; rather,  
8 it directs the agency to respond to Murawski's interrogatories.<sup>1</sup>  
9 This diminishes SEC's concerns about disclosing protected work  
10 product because it allows the agency to withhold or redact any  
11 documents that would reveal the contemporaneous thoughts and  
12 opinions of the attorneys who conducted the 2010 interviews. The  
13 order only requires SEC to disclose the specific information  
14 Murawski requested in his interrogatories.

15 CONCLUSION

16 For the foregoing reasons, SEC's motion for relief from the  
17 non-dispositive pretrial order of a magistrate judge (Docket No.  
18 92) is DENIED. SEC must respond to Murawski's Interrogatories  
19 8-10 within ten days of this order.

20 IT IS SO ORDERED.

21  
22 Dated: 4/8/2013

  
CLAUDIA WILKEN  
United States District Judge

23  
24  
25 <sup>1</sup> Murawski contends in his response that "SEC is withholding from  
26 production more than one hundred pages of its summaries of the  
27 interviews." Docket No. 97, at 2. However, as noted above, Judge  
28 Cousins' order does not direct SEC to produce these summaries -- it only  
directs it to respond to Murawski's interrogatories. Nothing in Judge  
Cousins' order suggests that these interrogatories should be construed  
as requests for production.